

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2 (2000 State Bar Edition). (This is a GIL).

August 10, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 1, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I wish to open an office in the State of Illinois for a business whose purpose is to sell home plan designs via the internet. I do not believe that a home plan design, though delivered on paper, is a tangible item. Thus, my understanding is that it is not subject to Illinois state sales tax. Is this correct?

Here is a summary of the business I wish to start:

I will maintain an office in Illinois for a business whose purpose is to sell home plans via the internet to customers nationally. My business will take orders on behalf of individual home plan designers located all over the US. When orders are taken, they are passed to the respective designer who will print and ship the home plans to the customer directly from their office, which is not likely to be located in Illinois. My business will accept all payments on behalf of the home plan designers for all orders it processes, and then distribute payments to the individual designers, withholding a sales commission.

I understand that a home plan design, though often transmitted on paper, is not considered a tangible item given that it is an idea and a service. The paper that a home plan is printed on has no value other than to explain the idea of that home design. Further, the customer is purchasing a non-exclusive, single use license to build, or modify and build, specific home plans from the designers. They are not purchasing the prints, though they do receive prints as a result of their purchase.

I request in writing the official position of the State of Illinois with regards to the sales tax liability of home plan designs.

The selling of home plan designs via the Internet is a retail sale. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition). As a general rule, when a product is an item of general utility and serves substantially the same function as a stock or standard item, the product will be subject to Retailers' Occupation Tax liability when sold at retail. See the enclosed copy of 86 Ill. Adm. Code 130.2000. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price. Calendars and gift tags are typically such items of general utility. Home designs may also fall into this category.

From the limited information contained within your letter it is difficult to determine the actual nature of the transactions you discuss. Home designs that serve the same function as a stock or standard design, such as those found in home design books at a bookstore, are subject to tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.